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April 2, 1987

Honorable Gerald N. Felando
Assemblyman, 51st District
State Capitol
Sacramento, CA 95814

Attention: Ms. Elaine Power

Dear Assemblyman Felando:

This is in response to your inquiry as to whether properties to be transferred by the City of Los Angeles to the United States Air Force and to be used for military housing will be subject to property taxation. As hereinafter indicated, they should not be.

We understand that in 1974, and again in 1978, the United States, acting by and through the Secretary of the Interior and other officials, transferred certain excess properties in Los Angeles County to the City of Los Angeles for use for public park and public recreation area purposes. Included in the deeds of conveyance, however, was a provision that if at any time the United States determined that the properties or any portion of the properties were needed for national defense, such properties would revert to and again become the property of the United States. It is pursuant to this provision that portions of the properties are being transferred to the United States Air Force.

Article XIII, section 1 of the California Constitution states that unless otherwise provided by this Constitution or the laws of the United States, all property is taxable. As to property owned by the United States, it is not subject to property taxation by a state within whose territorial limits it is located unless the United States consents to such taxation (Gottstein v. Adams (1927) 202 Cal. 581; Rohr Aircraft Corporation v. San Diego County (1960) 362 U.S. 628, 80 S. Ct. 1050, 4 L.Ed.2d 1002). Thus, upon transfer to the United States Air Force, the government-owned properties will not be subject to property taxation.

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However, in instances in which government-owned real property is not subject to property taxation, there is the further consideration of possessory interest taxation, taxation of interests of others in such property which exist as a result of possession, exclusive use, or a right to possession or exclusive use of land and/or improvements unaccompanied by ownership therein. As discussed by the court in United States of America v. Fresno County (1975) 50 Cal.App.3d 633, at pages 638 and 640:

"In this state the right to possess and use land or improvements 'except when coupled with ownership of the land or improvements in the same person,' is treated as a possessory interest and is subject to taxation (citations omitted). Generally speaking, a possessory interest includes the right of a private individual or corporation to use government-owned tax exempt land or improvements, and this right is considered a private interest taxable by the state and its taxing agencies (citations omitted). But not all occupancies or uses of tax exempt government-owned lands or improvements by private individuals are taxable as possessory interests. To give rise to a taxable possessory interest, the right of possession or occupancy must be more than a naked possession or use; it must carry with it, either by express agreement or tacit understanding of the parties, the degree of exclusiveness necessary to give the occupier or use something more than a right in common with others, or, in the case of employment, something more than the means for performing his employer's purpose, so that it can be said, realistically, that the occupancy or use substantially subserves an independent, private interest of the user or occupier (citations omitted).

* * *

"...A possessory interest assessment is not made against the government or government property; the assessment is against the private citizen, and it is the private citizen's usufructuary interest in the government land and improvements alone that is being taxed (citations omitted)."

The question of whether active duty military personnel living in government-owned military housing acquire taxable possessory interests in such housing was before the 9th Circuit Court of Appeals in United States v. Humboldt County (1980) 628 F.2d 549. Upon consideration, the court held that such personnel had not acquired taxable possessory interests, and that even if

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they had acquired such interests, taxation thereof would be constitutionally impermissible as taxation upon federal functions and properties. A copy of the court's decision is enclosed.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM/rz

Enclosure

bc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Verne Walton

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